

# About the Water Boards

## Who We Are: The California Water Boards

The State Water Resources Control Board (State Water Board) was created by the Legislature in 1967. The California Water Boards' mission is to ensure the highest reasonable quality for waters of the State, while allocating those waters to achieve a balance of beneficial uses. The joint authority of water allocation and water quality protection ensures that the Water Boards provide comprehensive protection for California's waters.

The State Water Board has five full-time salaried members, each filling a specialty position. Each board member is appointed to a four-year term by the Governor and confirmed by the Senate. The State Water Board devotes its resources primarily to the development and adoption of statewide standards and policies, general permits, and statewide plans, issuance of water quality control plans in areas of statewide significance, and the approval of regional water quality control plans.

There are nine Regional Water Quality Control Boards. The Regional Boards develop and enforce water quality objectives and plans that will best protect the beneficial uses of the State's waters, recognizing local differences in climate, topography, geology and hydrology.

Each Regional Board has nine part-time members serving four-year terms, also appointed by the Governor and confirmed by the Senate. Regional Boards develop basin plans for their watersheds, issue waste discharge permits, monitor water quality and take enforcement actions. Protecting and enforcing the uses of water, including the needs of industry, agriculture, municipal districts, and the environment is an ongoing challenge for all the California Water Boards.

## How We Came to Be: A Short History Lesson

Water has played a major, and often contentious, part in shaping our state since California entered the union in the mid-1800s.

Through a ballot initiative in the early 20th Century, voters passed a Constitutional amendment declaring that users of our water resources "shall put

water to the highest beneficial use possible and shall not waste water or use it unreasonably."

More than 40 years ago, the California Legislature recognized that we would not have enough clean water for agricultural, municipal, industrial, environmental and other uses unless water quality and water quantity decision-making were coordinated. So it was then that the State Water Resources Control Board was created and given broad authority not only to protect water quality, but to balance competing demands on our water resources and attempt to resolve decades-long water disputes.

This new regulatory board merged the functions of two previous Boards: the State Water Quality Control Board and the State Water Rights Board. The former had its roots in the late 1940s, when legislators created a more streamlined regulatory body to address the rising water quality problems associated with the state's explosive industrial and population growth. A water rights commission, which preceded the water rights board, was created in the early 1900s to arbitrate and resolve the state's water battles, which began during the 1849 Gold Rush.

Today the State Water Board allocates water rights, adjudicates water right disputes, develops statewide water protection plans and policies, establishes water quality standards, and guides the nine Regional Water Quality Control Boards located in the major watersheds of the state.

To better understand complexity of the State Water Board's charter, it is important to grasp the evolution of water rights and water protection as it evolved from the gold mining days, through the 20th century and the birth of the environmental movement in the late 1960s, to the new millennium.

## **The Early Years of Water Rights**

California's Water rights law is different from the laws governing water use in the eastern United States. Seasonal, geographic, and quantitative differences in precipitation caused California's system to develop into a blend of two kinds of rights: riparian and appropriative. Other types of rights exist in California, among them reserved rights (water set aside by the federal government when it reserves land for the public domain), and pueblo rights (a municipal right based on Spanish and Mexican law).

Riparian rights entitle the landowner to use a share of the water flowing past their property. While riparian rights require no permits or licenses, they apply only to the water that would naturally flow in the stream, and they do not allow the user to divert water for storage or use it on land outside its watershed. Riparian rights remain with the property when it changes ownership.

Water right law was set on a different course with the Gold Rush. Water development proceeded on a scale never before seen in the United States as the miners built extensive networks of flumes and waterways to work their claims. The self-governing miners applied the same "finders-keepers" rule to water that they did to their mining claims: it belonged to the first miner claiming ownership.

To stake their water claims, the miners developed a system of "posting notice" which signaled today's appropriative right system. It allowed others to divert available water from the same river or stream, but their rights existed in a ranking of priorities. This "first in time, first in right" principle became an important feature of modern water rights law.

When California entered the Union in 1850, one of the first actions taken by its lawmakers was to adopt the common law of riparian rights. One year later, the Legislature recognized the appropriative right system as having the force of law. The appropriative system continued to increase in use as agriculture and population centers blossomed and ownership of land was transferred into private hands. This is the basis of disputes which have continued through today.

*The Water Commission Act of 1913* established the foundation for the regulation of water use and the 1923 amendments to this act limited the appropriation of water by permit only. The State Water Rights Board was created in 1956 as part of the same legislation that created the Department of Water Resources. The Legislature recognized that the Department would both hold water rights and operate water project facilities so they created an independent board to administer water rights to avoid a potential conflict of interest.

California has no permit process for regulating groundwater use. Before 1903, the English system of unregulated groundwater pumping had dominated, but proved to be inappropriate to California's semi-arid climate. In most areas of the state, landowners whose property overlies groundwater may pump it for beneficial use without approval from the State Water Board or a court. In several Southern California basins, however, groundwater use is regulated. In the 1903

case, *Katz v. Walkinshaw*, the California Supreme Court decided that the "reasonable use" provision governing some water rights also applies to groundwater.

## The Early Years of Water Pollution Control

In the mid-1940s, outbreaks of water-borne diseases, degradation of fishing and recreational waters, coupled with war-time industrial development and population growth triggered a new appraisal of California's water pollution control.

While there were many government agencies with degrees of jurisdiction over waste disposal, public health, or water, attempts to address and solve new pollution concerns in a planned manner were unsuccessful.

Cities built capital improvement programs for pollution control. Industries, confronting unanticipated demands, found differing interpretations of laws and overlapping authority among the local, state, and federal regulatory agencies.

In 1949, the California Assembly Committee on Water Pollution realized that existing laws were often unreasonable. Numerous jurisdictions tried to carry out the laws in the midst of hostility from agricultural, industrial, and recreational interests. The committee concluded that the state had reached the point where continued population and industrial growth would soon exhaust water supplies. California's water resources could only be protected and conserved if regulators found a way to maximize water quality objectives and water conservation.

Sweeping changes in California's approach to water pollution control and water quality were recommended. Specifically, the committee said:

*"Water pollution is largely a local or regional problem....but it also involves conflicting interests of the State and the Nation. Channeling all interests through a single focal point at the local level will provide the missing link necessary to abate, control, and prevent water pollution effectively and equitably."*

Acting on the committee's recommendations, the Legislature enacted the *Dickey Water Pollution Act* that took effect October 1, 1949.

## ***Dickey Water Pollution Act: Creation of State Water Pollution Control Board and the Nine Regional Water Pollution Control Boards***

**T**he Dickey Act, enacted in 1949, created a "State Water Pollution Control Board" consisting of nine gubernatorial appointees representing specific interests and four ex officio state officials. Duties included (1) setting statewide policy for pollution control and (2) coordinating the actions of those state agencies and political subdivisions of the state in controlling water pollution.

The Legislature realized that California's water pollution problems were regional and depended on precipitation, topography, and population, as well as recreational, agricultural, and industrial development, all of which vary from region- to- region. The committee's report noted that the snow-capped mountains of the Sierra Nevada differ from the Mojave Desert as significantly as Vermont differs from Arizona; and the industrialized Los Angeles basin and San Francisco Bay area are as different from the San Joaquin Valley or the North Coast as New York Harbor is from central Texas or Washington state.

*The Dickey Act* established nine regional water pollution control boards in each of the major California watersheds.

## **The Creation of the State Water Resources Control Board**

**W**hile controlling water pollution remained the responsibility of the State Water Pollution Control Board and nine Regional Boards, a new appreciation for water quality among Californians evolved in the 1950s and 1960s.

Several measures were proposed to strengthen the existing Water Pollution Control Board. It was renamed the State Water Quality Control Board and was charged with the broader field of water quality (rather than the limited field of sewage and industrial waste control).

Recognizing that California's many water issues involve quantity and quality, the Assembly Water Committee's 1966 and 1967 reports proposed a coordinated water regulatory program. These reports included statutory changes that were enacted, and in 1967, the State Water Quality Control Board and State Water Rights Board merged and became the State Water Resources Control Board.

## ***Porter-Cologne: California's Cornerstone of Water Protection Law***

The State Assembly then asked a panel of industrial, agricultural, local and state government members to report on revisions to water quality laws. In 1969, the State Legislature enacted the *Porter-Cologne Water Quality Control Act*, which is the cornerstone of California's water protection efforts.

*Porter-Cologne*, named for the late Los Angeles Assemblyman Carly V. Porter and then-Senator Gordon Cologne, was recognized as one of the nation's strongest pieces of anti-pollution legislation. Through it, the State Water Board and the nine Regional Boards have been entrusted with broad duties and powers to preserve and enhance all beneficial uses of the state's complex waterscape. The new state law was so influential that Congressional authors used sections of *Porter-Cologne* as the basis of the *Federal Water Pollution Control Act* Amendments of 1972 (known as the *Clean Water Act*).

The *Clean Water Act* required the states, or the U.S. Environmental Protection Agency (US EPA), to set standards for surface water quality, mandate sewage treatment and regulate wastewater discharges into the nation's surface waters. It established a multi-billion dollar Clean Water Grant Program that, together with Clean Water Bond funding approved by California's voters, assisted communities in building municipal wastewater treatment facilities.

Rather than operate separate state and federal water pollution control programs in California, the State assumed responsibility for implementing the *Clean Water Act*. This involved blending state and federal processes together for setting water quality standards, issuing discharge permits, and operating the grants program.

## **Water Quality Control Plans**

*Porter-Cologne* requires the adoption of Water Quality Control Plans which contain the guiding policies of water pollution management in California. There are several statewide water quality control plans adopted by the State Water Board, such as the Ocean Plan; and regional water quality control plans, referred to as Basin Plans, which have been adopted by each of the Regional Water Boards.

All water quality control plans identify the existing and potential beneficial uses of waters of the state and establish water quality objectives to protect these uses.

They contain an implementation, surveillance and monitoring plan. Water Quality Control Plans include enforceable prohibitions against certain discharges. Most water quality control planning is done by Regional Water Boards and is subject to State Water Board approval.

Basin Plans have been adopted for each of the nine regions of California. The nine regions may be identified by numerals and include:

1. North Coast
2. San Francisco Bay
3. Central Coast
4. Los Angeles
5. Central Valley
6. Lahontan
7. Colorado River Basin
8. Santa Ana Basin
9. San Diego

### **State Water Board and the Regional Boards Working Together**

The Regional Water Boards regulate discharges under *Porter-Cologne* primarily through waste discharge requirements. Anyone discharging or proposing to discharge materials that could affect water quality (other than to a community sewer system) must file a report of waste discharge. The State Water Board and the Regional Boards can conduct their own investigations or may require dischargers to carry out water quality investigations and report on water quality issues. *Porter-Cologne* provides several options for the enforcement of waste discharge requirements including cease and desist orders, cleanup and abatement orders, administrative civil liability orders, civil court actions, and criminal prosecutions. The State Water Board covers both water rights and water pollution control functions enabling it to consider water quality and the availability of unappropriated water whenever rights to water use are granted, or waste discharge controls are established.